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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/661,006	09/11/2003	Richard Neil Tobin	884.0080USU	7484
7590	06/22/2005		EXAMINER	
Charles N.J. Ruggiero, Esq. Ohlandt, Greeley, Ruggiero & Perle, L.L.P. 10th Floor One Landmark Square Stamford, CT 06901-2682			FETSUGA, ROBERT M	
			ART UNIT	PAPER NUMBER
			3751	
DATE MAILED: 06/22/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/661,006	TOBIN ET AL.	
	<b>Examiner</b> Robert M. Fetsuga	<b>Art Unit</b> 3751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 28 April 2005.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-32 and 34-42 is/are pending in the application.
- 4a) Of the above claim(s) 7, 16, 19, 22, 23, 35 and 42 is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-6, 8-15, 17, 18, 20, 21, 24-32, 34 and 36-41 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 18 January 2005 is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
    - a) All
    - b) Some \*
    - c) None of:
      1. Certified copies of the priority documents have been received.
      2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
      3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | Paper No(s)/Mail Date. _____  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>01/18/05</u> . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|   | 6) <input type="checkbox"/> Other: _____                                    |

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1. Applicant's election with traverse of Group II, Species I, in the reply filed on April 28, 2005 is acknowledged. The traversal is on the ground(s) that "it would be more expedient to prosecute all embodiments in a single application." This is not found persuasive because applicant's have not provided any reasoning in support of this inherently contradictory statement.

The requirement is still deemed proper and is therefore made FINAL. Accordingly, claims 19, 22, 35 and 42 are withdrawn from further consideration pursuant to 37 CFR 1.142(b).

2. Claims 7, 16 and 23 are objected to as not encompassing the elected inventions where applicant's have made statements to the contrary in the response filed April 28, 2005. Claim 7 recites "a receiver for receiving said signal from said remote control." This subject matter is clearly directed to the embodiment of Fig. 19 as described at page 16, beginning at line 10. Claim 16 recites a "retractable cord". This subject matter is clearly directed to the embodiment of Fig. 21 as described at page 18, beginning at line 29. Claim 23 similarly recites the same subject matter as that of claim 16.

Accordingly, claims 7, 16 and 23 additionally are withdrawn from further consideration pursuant to 37 CFR 1.142(b).

3. The disclosure is objected to because of the following informalities: Page 11, line 12, "inlet 19" apparently should

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be --outlets 17--; page 15, line 2, and page 17, line 30, reference numeral "50" denotes different elements; and page 19, lines 2 and 5, reference numerals "90" and "92" are missing.

Appropriate correction is required.

4. The drawings are objected to because cross-hatching is missing from Figs. 3 and 15, reference character "37'"' apparently should be --34'-- in Fig. 17, and reference numeral "52" apparently should be --49-- in Fig. 19 (pg. 16 ln. 14).

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the subject matter set forth in claims 4, 25, 26 and 34, "adjustable nozzles" set forth in claim 10, "aeration and/or drainage apertures" set forth in claim 18, and "soft elastic material" set forth in claim 40, must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the

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appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

5. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: Proper antecedent basis for the "spaced a distance from said bottom wall" language set forth in claim 1, "temperature controller" set forth in claim 18, subject matter set forth in claim 32, and "roller controller" set forth in claims 36-41, could not be found in the specification. Applicant is reminded claim terminology in mechanical cases should appear in the descriptive portion of the specification by reference to the drawing(s).

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6. Claim 4 is rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

The claim recites "a vibrating actuator cooperative with said bottom wall". Implementation of this subject matter is neither taught by the instant disclosure nor evident to the examiner.

7. Claim 10 is rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

The claim recites "adjustable nozzles". Implementation of this subject matter is neither taught by the instant disclosure nor evident to the examiner.

8. Claim 18 is rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

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The claim recites "aeration and/or drainage apertures".

Implementation of this subject matter is neither taught by the instant disclosure nor evident to the examiner.

9. Claims 21 and 31 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

The claims recite "a controller". Implementation of this subject matter is neither taught by the instant disclosure nor evident to the examiner.

10. Claim 25 is rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

The claim recites "an ion and/or ozone emitter for emitting ions into aid fluid." Implementation of this subject matter is neither taught by the instant disclosure nor evident to the examiner.

11. Claim 26 is rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art

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to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

The claim recites "an aerator for aerating said fluid."

Implementation of this subject matter is neither taught by the instant disclosure nor evident to the examiner.

12. Claim 34 is rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

The claim recites a "removable" bottom wall.

Implementation of this subject matter is neither taught by the instant disclosure nor evident to the examiner.

13. Claims 36-41 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

The claims recite a "roller controller." Implementation of this subject matter is neither taught by the instant disclosure nor evident to the examiner.

14. Claims 9 and 32 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point

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out and distinctly claim the subject matter which applicant regards as the invention.

Claim 9 is redundant to claim 1.

15. Claim 32 recites "said operative functions can operate independently." The metes and bounds of this language is neither discernable from the instant application, nor evident to the examiner.

16. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

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17. Claims 1, 2, 4, 8, 9, 11, 12, 14, 15, 17, 20, 21, 24, 26 and 29-32 are rejected under 35 U.S.C. 102(b) as being anticipated by Kurosawa '529.

The Kurosawa '529 ('529) reference discloses a spa comprising: a housing 2; a fluid transport assembly 22 including an inlet 20 and an outlet 18; a heater 21a; a vibrating actuator 16; a control panel/controller 29; an infrared heater 6; a cover 3; a raised portion (Fig. 2); and an aerator 19, as claimed.

18. Claims 3, 14, 17, 24, 27-32, 34, 36-39 and 41 are rejected under 35 U.S.C. 103(a) as being unpatentable over '529 and Ferber et al. '795.

Re claim 3, although the '529 spa does not include a housing heater, as claimed, attention is directed to the Ferber et al. '795 ('795) reference which discloses an analogous spa which further includes a housing heater 48. Therefore, in consideration of '795, it would have been obvious to one of ordinary skill in the spa art to associate a housing heater with the '529 spa in order to facilitate use.

Re claim 14, it would have been obvious to locate the infrared heater of the '529 spa on the raised surface as taught by '795 (abstract) in order facilitate use.

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Re claim 29, although the '529 spa does not include a variety of attachments, as claimed, attention is again directed to '795 (Figs. 9-21) which discloses a variety of attachments (Figs. 14-18b). Therefore, in further consideration of '795, it would have been obvious to one of ordinary skill in the spa art to associate a variety of attachments with the '529 spa in order to facilitate use.

Re claim 34, although the '529 spa does not include a removable bottom wall, as claimed, attention is yet again directed to '795 (Figs. 9-21) which discloses a removable bottom wall (Figs. 19-21b). Therefore, in still further consideration of '795, it would have been obvious to one of ordinary skill in the spa art to associate a removable bottom wall with the '529 spa in order to facilitate use.

Re claim 36, it would have been obvious to utilize a roller controller with the '529 spa as taught by '795 (element 42) in order to facilitate use.

19. Claims 5, 6 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over '529 and Barradas.

Although the control of the '529 spa is not remote, as disclosed, attention is directed to the Barradas reference which discloses an analogous spa which further includes a remote control (abstract). Therefore, in consideration of Barradas, it

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would have been obvious to one of ordinary skill in the spa art to associate a remote control with the '529 spa in order to facilitate use.

20. Claims 10, 12 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over '529 and Morton.

Although the outlet of the '529 spa does not include an adjustable nozzle, as claimed, attention is directed to the Morton reference which discloses an analogous spa which further includes an adjustable nozzle (par. 0034 lns. 1-3). Therefore, in consideration of Morton, it would have been obvious to one of ordinary skill in the spa art to associate an adjustable nozzle with the '529 spa in order to facilitate use.

21. Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over '529 and '795 as applied to claim 17 above, and further in view of Cafaro.

Although the raised portion of the '529 spa does not include a temperature controller, an attachment receptor or the infrared heater, as claimed, attention is directed to the '795 reference (Figs. 9-21) which discloses an analogous spa which further includes a raised portion 120 having a temperature controller 142, an attachment receptor 187 and an infrared heater 146. Therefore, in consideration of '795, it would have been obvious to one of ordinary skill in the spa art to

associate a temperature controller, an attachment receptor and the infrared heater with the '529 raised portion in order to facilitate use.

Although the raised portion of the '529 spa does not include an aperture, as claimed, attention is directed to the Cafaro reference which discloses an analogous spa which further includes a raised portion 142 having an aperture 168. Therefore, in consideration of Cafaro, it would have been obvious to one of ordinary skill in the spa art to associate an aperture with the '529 raised portion in order to facilitate use.

22. Claim 25 is rejected under 35 U.S.C. 103(a) as being unpatentable over '529 and Yeh.

Although the '529 spa does not include an ozone emitter, as claimed, attention is directed to the Yeh reference which discloses an analogous spa which further includes an ozone emitter (abstract). Therefore, in consideration of Yeh, it would have been obvious to one of ordinary skill in the spa art to associate an ozone emitter with the '529 spa in order to facilitate use.

23. Claim 40 is rejected under 35 U.S.C. 103(a) as being unpatentable over '529 and '795 as applied to claim 36 above, and further in view of Bauer et al.

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Although the knob of the '529 controller does not include soft elastic material, as claimed, attention is directed to the Bauer et al. (Bauer) reference which discloses an analogous controller which further includes a knob having soft elastic material (abstract). Therefore, in consideration of Bauer, it would have been obvious to one of ordinary skill in the controller art to associate soft elastic material with the '529 knob in order to facilitate use.

24. Applicant is referred to MPEP 714.02 and 608.01(o) in responding to this Office action.

25. Any inquiry concerning this communication should be directed to Robert M. Fetsuga at telephone number 571/272-4886 who can be most easily reached Monday through Thursday.



Robert M. Fetsuga  
Primary Examiner  
Art Unit 3751